

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-01946

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His record be corrected to recompute his retirement pay in accordance with the Temporary Early Retirement Authority (TERA).

### APPLICANT'S CONTENTIONS

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, Section 18, states he retired as provided by Section 4403 of the FY93 National Defense Authorization Act (PL 102-484) and directs a recomputation of retired pay at Age 62.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force senior airman (E-4).

On 30 Apr 94, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant was separated from active duty for the purpose of retirement. Item 18, Remarks, states "Member is retiring as provided by Section 4403 of the FY93 National Defense Authorization Act (PL 102-484) and May Qualify for a Recomputation of Retired Pay at Age 62 Pursuant to Section 4464 of the Same Law."

Special Orders No. Work-Product indicates he was credited with 18 years, 5 months and 24 days of active service for retirement.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Congress enacted the Temporary Early Retirement Authority (TERA), which permitted selected military members to retire early. Section 534 of that law gave the Secretary of Defense authority to allow the Service Secretaries to permit early retirement for selected military members having more than 15 but less than 20 year of active service. Public Law 107-314, National Defense Authorization Act for Fiscal Year 2003, Section 554, extended TERA to 1 Sep 2002 at which time that TERA authority expired.

Section 4464 of the FY93 NDAA allowed eligible members retired under TERA to perform public and community service (PACS) following retirement and receive credit for this service to

be used to recompute military retired pay, and where applicable, the Survivor Benefit Plan (SBP) base amount when the retired member attains or would have attained 62 years of age. Public and community service job vacancies included education, conservation, environmental protection, law enforcement, and public health care positions.

Program management was established and announced to the Services through the Assistant Secretary of Defense (ASD) Memorandum, Active Duty Early Retirement Policy Guidance, dated 12 Mar 1993, and the ASD Memorandum, Implementing Procedures for Temporary Early Retirement Authority (TERA) Programs, dated 22 Apr 1993. The Air Force also provided specific instructions to the field through a Military Personnel Flight Letter (MPFL) 93-024, Voluntary Early Retirement Program, dated 9 April 1993. The Department of Defense (DOD) also provided specific information on obtaining public and community service credit through the DoD Instruction 1340.19, Certification of Public and Community Service Employment of Military Retirees, dated November 17, 1993.

The applicant retired effective 01 May 1994 under the TERA authority, with 18 years, 05 months, and 24 days of total active federal military service (TAFMS). The NDAA required members retiring under TERA to register in advance of the projected retirement date on the Public and Community Service Registry maintained under 10 USC Section 1143a. The law allows no provision to retroactively register for employment in public or community service organizations.

Applicants were required to turn in proof of public or community service to the Defense Manpower Data Collection (DMDC) team no later than one year after they would have attained 20 years Total Active Federal Military Service (TAFMS) had they been continuously on active duty. This date is referred to as the individual's Enhanced Retirement Qualification Period (ERQP). The applicant retired 01 May 1994 with 18 years, 05 months, and 24 days of active service, therefore, any creditable service must have been completed prior to 07 November 1995 (the end of his ERQP). Based on the reporting instructions established by the DMDC, the applicant was required to submit record of the creditable service within a year of that point (or 07 November 1996).

The DMDC does not have any record that the applicant applied for PACS. Had the applicant properly registered within the allotted time period and provided the required documentation, he would have been eligible to receive credit for the time served under the PACS program.

The complete advisory opinion is at Exhibit C.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 19 Jan 21 for comment (Exhibit D), but has received no response.

#### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the reporting instructions established by the Defense Manpower Data Collection (DMDC), the applicant was required to submit record of the creditable service within a year of that point (or 7 Nov 96). The DMDC does not have any record that the applicant applied for PACS. Therefore, the Board recommends against correcting the applicant's records.

### **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

### **CERTIFICATION**

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-01946 in Executive Session on 20 Jul 21:

- , Panel Chair
- , Panel Member
- , Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 1 May 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 8 Jan 21.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Jan 21.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.